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10/672,402	09/29/2003	Helmut Grollitsch	1523-5	9151

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EXAMINER

HAGEMAN, MARK

ART UNIT

PAPER NUMBER

3653

DATE MAILED: 11/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

### Application No.

10/672,402

### Applicant(s)

GROLLITSCH ET AL.

### Examiner

Mark Hageman

### Art Unit

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 22-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 32 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 32 recites the limitation "said open side" in line 2. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 22-27, 30, and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0043170. The reference discloses a frame; a conveyor means (18) mounted on said frame, said conveyor means for moving the case along said frame; and a first ram means (20) affixed to said frame, said first ram means for applying a force onto a surface of a wall of the case (page 2, lines 9+), a second ram means affixed to said frame and positioned in a different location on said frame from said first ram means, said second ram means for applying a force onto another surface of the

case (Fig. 4), said second ram means comprising: a pneumatic ram having a cylinder affixed to said frame and a piston extending outwardly of said cylinder, said piston being movable between a first position and a second position relative to said cylinder, said first position positioning said piston away from said another surface of the case, said second position urging against said another surface of the case (page 6, lines 12+), and said piston having a curved surface positioned at an end of said piston opposite said cylinder (31 and page 6 lines 4+).

With regards to claim 23, the reference further discloses a sensor (21) means cooperative with said first ram means, said sensor means for detecting when the surface of the wall of the case has deflected beyond a desired amount (page 2, lines 9+).

With regards to claim 24, the reference further discloses ejection means affixed to said frame and cooperative with said conveyor means for ejecting the case from said conveyor means when the wall of the case has deflected beyond the desired amount (page 2, lines 9+).

With regards to claim 25, the reference further discloses a pneumatic ram (30) having a cylinder (28) affixed to said frame, said pneumatic ram having a piston extending outwardly therefrom; and an arm (25) pivotally connected to said piston and pivotally connected to said frame (Fig. 4).

With regards to claim 26, the reference further discloses said piston being movable between a first position and a second position relative to said cylinder, said

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first position causing said arm to be positioned away from the wall of the case, said second position urging the wall of the case outwardly (Fig. 4; page 5, lines 31+).

With regards to claim 27, the reference further discloses a sensor means connected to said cylinder and cooperative with said piston, said sensor means for determining when said second position is beyond a desired limit of movement (page 6, lines 15+).

With regards to claim 30, the reference further discloses a positioning means (17) affixed to said frame, said positioning means for fixing a position of the case relative to said frame.

With regards to claim 31, the reference further discloses a separating means (5, 1) affixed to said frame in spaced relation to said positioning means, said separating means for spacing another case from the case on the conveyor means when said positioning means fixed the position of the case.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-24 and 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2,052,765A (hereafter referred to as the reference) in view of US 5,528,925 to Sherepa et al. The reference discloses a frame; a conveyor means (2)

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mounted on said frame, said conveyor means for moving the case along said frame; and a first ram means (20) affixed to said frame, said first ram means for applying a force onto a surface of a wall of the case (Fig. 1), a second ram means (20) affixed to said frame and positioned in a different location on said frame from said first ram means, said second ram means for applying a force onto another surface of the case (Fig. 1; page 2, lines 103+), said second ram means comprising: a pneumatic ram having a cylinder affixed to said frame and a piston extending outwardly of said cylinder, said piston being movable between a first position and a second position relative to said cylinder, said first position positioning said piston away from said another surface of the case, said second position urging against said another surface of the case (Fig. 1; page 2, lines 103+). The reference does not disclose said piston having a curved surface positioned at an end of said piston opposite said cylinder. Sherepa discloses a piston having a curved surface (66) positioned at an end of said piston opposite said cylinder (66, fig 4a and 4b) for the purpose of allowing relative motion between the wheel or curved surface (66) and the container (c3 lines 62+).

With regards to claim 28 the reference discloses all the limitations of the claim except the curved surface being a roller rotatably positioned at one end of said piston opposite said cylinder. Sherepa discloses the curved surface being a roller (66) rotatably positioned at one end of said piston opposite said cylinder. (66, fig 4a and 4b) for the purpose of allowing relative motion between the wheel or curved surface (66) and the container (c3 lines 62+).

It would have been obvious to one of ordinary skill in the art at the time of the applicants invention to have modified the GB 2,052,765 reference to include the wheel or curved surface, as taught by Sherepa, for the purpose of allowing relative motion between the wheel or curved surface (66) and the container (c3 lines 62+).

With regards to claim 23, the reference further discloses a sensor means cooperative with said first ram means, said sensor means for detecting when the surface of the wall of the case has deflected beyond a desired amount (page 2, lines 103+).

With regards to claim 24, the reference further discloses ejection means affixed to said frame and cooperative with said conveyor means for ejecting the case from said conveyor means when the wall of the case has deflected beyond the desired amount (page 2, lines 117+).

With regards to claim 29, the reference further discloses said ejection means comprising: a pneumatic ram (27) having a cylinder affixed to said frame, said pneumatic ram having a piston extending outwardly therefrom, said piston being movable between a first position and a second position relative to said cylinder, said first position causing said piston to be positioned away from the case, said second position urging against the case so as to separate the case from said conveyor means (page 2, lines 117+).

With regards to claim 30, the reference further discloses a positioning means (11) affixed to said frame, said positioning means for fixing a position of the case relative to said frame (page 2, lines 85+).



With regards to claim 31, the reference further discloses a separating means affixed to said frame in spaced relation to said positioning means, said separating means for spacing another case from the case on the conveyor means when said positioning means fixed the position of the case (Fig. 1).

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0430170 in view of US 5,528,925 to Sherepa et al. The EP reference discloses all the limitations of the claim except the curved surface being a roller rotatably positioned at one end of said piston opposite said cylinder. Sherepa discloses the curved surface being a roller (66) rotatably positioned at one end of said piston opposite said cylinder. (66, fig 4a and 4b) for the purpose of allowing relative motion between the wheel or curved surface (66) and the container (c3 lines 62+).

It would have been obvious to one of ordinary skill in the art at the time of the applicants invention to have modified the EP 0043170 reference to include the wheel (66) as the curved surface, as taught by Sherepa, for the purpose of allowing relative motion between the wheel or curved surface (66) and the container (c3 lines 62+).

Claims 32-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0043170 in view of US 5,042,233 to Huang et al. EP 0043170 discloses fixing a position of a case (p4 lines 26+), the case having an open side and a closed side with a plurality of walls extending there between (16), applying a force against one of the plurality of walls such that the walls deflects (p3 lines 15+); and determining whether the



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deflection of the wall is beyond a desired amount (p3 lines 20+ and p6 lines 15+); forming a frame having a conveyor thereon (1 and p4 line 15+), conveying the case along said frames (1 and p4 line 15+). EP 0043170 does not disclose placing the case on said conveyor such that an open side thereof faces said conveyor. Huang discloses placing the case on said conveyor such that an open side thereof faces said conveyor (abstract and c1 lines 12+) for the purpose allowing the conveying elements to perform operations on the case such as manipulating the flaps and providing the package in an orientation that will aid subsequent article stowing operations (c1 lines 6+).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have modified EP 0043170 to include placing the case on said conveyor such that an open side thereof faces said conveyor, as taught by Huang, for the purpose allowing the conveying elements to perform operations on the case such as manipulating the flaps and providing the package in an orientation that will aid subsequent article stowing operations.

With regards to claim 33, the reference further discloses said step of applying the force comprising: positioning a surface of a ram against the wall of the case; and actuating said ram such that said surface of said ram urges against the wall of the case (page 2, lines 9+).

With regards to claim 34, the reference further discloses said step of determining comprising: sensing an amount of movement of said surface of said ram (page 6, lines 15+).

With regards to claim 35, the reference further discloses said ram having a pneumatic cylinder mounted in a fixed position, said ram having a piston extending outwardly of said cylinder; said ram having an arm pivotally connected to, said piston, said step of actuating the ram comprising: retracting said piston within said cylinder such that said arm pivots outwardly, said arm having said surface thereon urging against said wall (Fig. 4; page 5, lines 31+).

With regards to claim 36, the reference further discloses said step of fixing the position comprising: actuating a pneumatic ram such that a piston of the ram extends through said open side and abuts one of said plurality of walls so as to stop a movement of the case relative to said conveyor (Fig. 4). Examiner contends that the process of Fig. 4 fixes the position of the crate as well as performing the test.

With regards to claim 37, the reference further discloses ejecting the case when the deflection of the wall is beyond the desired amount (page 2, lines 9+).

With regards to claim 38, the reference further discloses applying another force against said closed side of said case, such that said closed side deflects; and determining whether the deflection of said closed side is beyond a predetermined limit (page 6, lines 12+). Examiner contends that a side wall is a closed side.

### ***Response to Arguments***

Applicant's arguments with respect to claims 22-38 have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Hageman whose telephone number is (571) 272-3027. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey can be reached on (571) 272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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